

DEPARTMENT OF SOCIAL SERVICES

744 P Street, M.S. 19-31  
Sacramento, CA 95814  
(916) 445-7964



March 11, 1981

ALL-COUNTY LETTER NO. 81-24

TO: ALL COUNTY WELFARE DIRECTORS  
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES  
ALL DEPARTMENT OF SOCIAL SERVICES DISTRICT OFFICES

SUBJECT: Adoption Regulations Implementing the Indian Child Welfare Act of 1978

REFERENCE:

This letter is to provide you with a copy of the state regulations which implement the adoption provisions of the Indian Child Welfare Act of 1978. An informational notice regarding these regulations was previously sent to all public and private adoption agencies. Attached are a copy of regulation Sections 30900-30966 which are incorporated in the California Administrative Code, Title 22, Division 2, Chapter 3, and a copy of the Final Statement of Reasons. These regulations were filed on December 29, 1980 and are effective 30 days from that date.

In addition, this letter is to provide information about consent and relinquishment forms to be used in the adoption of an Indian child who has been determined to come within the provisions of the Indian Child Welfare Act. A new series of relinquishment and consent forms prescribed by this Department has been developed to accommodate the provisions of the Act. These forms include the statement of certification of the consent or relinquishment to be signed by the judge of the Superior Court or other court of competent jurisdiction.

Adoption agencies should now order the forms for immediate use. They may be ordered from:

State Department of Social Services Warehouse  
6150 - 27th Street, M.S. 19-20  
Sacramento, CA 95320

The forms appropriate for adoption agency use are listed below:

Relinquishment Forms - Public and Private Licensed Adoption Agencies

AD 862 Relinquishment of Indian Child by Alleged Natural Father  
(Out of State or Country)  
AD 863 Relinquishment of Indian Child (Out of State)  
AD 864 Relinquishment of Indian Child  
AD 865 Relinquishment of Indian Child (Out of County)  
AD 866 Relinquishment of Indian Child  
AD 867 Relinquishment of Indian Child (Out of State)  
AD 868 Relinquishment of Indian Child  
(Alleged Natural Father in California)  
AD 873 Relinquishment of Indian Child (Out of County)

Relinquishment Forms - State Department of Social Services District Offices

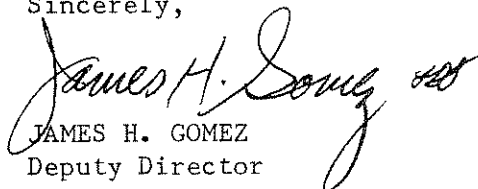
AD 870 Relinquishment of Indian Child  
(Alleged Natural Father in California)  
AD 871 Relinquishment of Indian Child (Out of County)  
AD 872 Relinquishment of Indian Child Alleged Natural Father  
(Out of State or Country)  
AD 874 Relinquishment of Indian Child  
AD 875 Relinquishment of Indian Child (Out of State)  
AD 876 Relinquishment of Indian Child  
AD 877 Relinquishment of Indian Child (Out of County)  
AD 878 Relinquishment of Indian Child (Out of State)

Consent Forms - Independent Adoptions

AD 857 Consent to Adoption of Indian Child by Parent in California  
AD 858 Consent to Adoption of Indian Child by Parent(s) in California  
AD 859 Consent to Adoption of Indian Child by Parent(s) Outside California  
AD 860 Consent to Adoption of Indian Child by Father Outside California  
AD 861 Consent to Adoptive Placement of Indian Child by Alleged Natural Father

If any assistance is needed regarding the forms or implementation of the regulations, please contact your Adoptions Program Consultant.

Sincerely,

  
JAMES H. GOMEZ  
Deputy Director

Attachments

cc: CWDA

CONTINUATION SHEET  
FOR FILING ADMINISTRATIVE REGULATIONS  
WITH THE SECRETARY OF STATE  
(Pursuant to Government Code Section 11380.1)

Section 30905

Two changes have been made to subsection (b) to clarify what the agency or district office must send to the Department for forwarding to the BIA. The title of the form AD 4311 -- Information on American Indian Child (Adoption Program) -- has been added for identification and clarity and clarification has been added that "a copy of the original birth certificate" is required. In subsection (c), the words "by agreement" have been deleted after the words "The BIA will..."

Section 30910

It was pointed out that the information required by this section may not be available from the parent. Subsection (b) has been appropriately amended.

Section 30912

This section has been revised to clarify that the order of placement preference pertains to both relinquishment and independent adoptions, although in an independent adoption the parent may choose not to follow the order. The revision changes some subsection numbering.

A request was denied to incorporate in subsection (c) the method or process for the court to advise the agency whether or not the placement order has been modified. These regulations do not regulate the court; in addition, the method may vary among the courts.

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The words "or refuses to give consent" are added after the words "or withdraw consent" in subsection(g) (formerly subsection (e)). It was also requested that the three- to seven-day time period be lengthened for return of a child to a parent withdrawing consent or refusing to give consent. A more flexible time period was not granted as this would provide no specific assurance that parental rights under the Act would be protected. (This same request was also denied as to Section 30925(c)).

Subsection (g)(1) allows the parent to rescind the relinquishment or withdraw consent after the child is placed for adoption. It was suggested that a specific time period (perhaps 30 days) should be offered during which the relinquishment/consent would not be filed and could be withdrawn by the parent. The Indian Child Welfare Act provides for the withdrawal of consent or relinquishment at any time prior to finalization of the adoption as set forth in Sections 30921(b)(1) and 30932(b)(1).

In subsection (g)(2), it was pointed out that the Department cannot mandate that "the parent shall request the petitioners to return the child..." The wording has been changed to reflect the Department's intention, which is "...if the consent has not been signed and the parent wishes return of the child, the parent rather than the agency will request the petitioners to return the child." It was also testified that subsection (g)(2) conflicts with current state law (Civil Code Section 226a) which requires the parent who wishes to withdraw consent to petition the court to do so. Federal law preempts state law in this respect. It was further requested that the

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mandate be removed which requires the agency or district office to recommend to the court that the child be returned to the parent who gave up custody of the child and who is now withdrawing consent or rescinding relinquishment. Section 1913(c) of the Act states, "In any voluntary proceeding for termination of parental rights to, or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination, or adoption as the case may be, and the child shall be returned to the parent." The agency responsible for returning the child is limited by section 1920 of the Indian Child Welfare Act which states in part that the court shall forthwith return the child to his parent or Indian custodian unless returning the child to his parent or custodian would subject the child to a substantial and immediate danger or threat of danger. It is this standard of "imminent danger" that prevails in decisions regarding return of children to Indian parents or custodians. Section 30925 of state regulations mandates referral to child protective services if the agency determines the child is in jeopardy of serious physical or emotional damage.

It was suggested that time frames designated in the federal law for parental right termination proceedings be added to subsection (i). These time frames have been added into Section 30944(d)(3).

Subsection (k) has been amended to require that the case record document the parent's desire for notice of the adoption petition's dismissal or set aside; a copy of the notice must be retained in the case record as well. Minor related clarifications were also made to this subsection.

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Final Statement of Reasons

Existing regulation makes no special provision for the adoptive placement of Indian children, as required by the federal Indian Child Welfare Act (ICWA). The attached regulations promote the stability and security of Indian tribes and families by preventing unwarranted removal of Indian children from their homes, and by establishing standards which preserve familial or cultural ties when placement of an Indian child in an adoptive home is necessary. The regulations also require that the public or private agency involved in placing the child gather certain information about the child's ancestry, as required under Civil Code Section 224a, to ensure that the Indian adoptee can establish eligibility for available services and benefits.

The attached regulations implementing the adoptions-related aspects of the ICWA were presented at public hearing on March 11, 12 and 14, 1980. Included in the same hearing package were regulations to implement the foster care portions of the ICWA.

The foster /care regulations were subsequently processed and adopted separately. The department's response to public hearing testimony on the foster care regulations was filed with those regulations. Following is the response to testimony on the adoptions regulations.

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Section 30900

Contrary to testifiers' requests, the department is unable to expand the definition of "Indian" beyond the federal definition of "Indian" as provided by Indian Child Welfare Act. California has a unique problem regarding the definition of "Indian" since many California Indians do not have federally recognized tribal affiliations. However, in practice, whether or not a child has tribal affiliation, if the Bureau of Indian Affairs certifies that the child comes within the provisions of the Act, agencies must follow the order of placement preference and the other provisions outlined in the regulations, although no custody rights pertain as to tribal intervention in court proceedings.

A definition of "tribal court" was added.

Requests to define other terms used in the regulations, such as "good cause to the contrary" and "significant contacts," were turned down. The terms are used in the Indian Child Welfare Act itself and no attempt was made to expand, edit or interpret such terms. Conflicts in interpretation will be resolved by the court with jurisdiction over the custody proceeding. In like manner, the term "serious physical or emotional damage" is not defined, as such determination depends on a myriad of individual circumstances. A definition of "court of competent jurisdiction" has not been added as this definition will vary among the states or for military installations.

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Section 30925

Subsection (d) has been amended to clarify that it is "court proceedings" which are referred to.

Section 30932

Clarification has been added that the agency must immediately file a report with the court recommending return of the child when the circumstances set forth in subsection (b)(1) exist. A redundant requirement was deleted (former subsection (b)(2)) and the remaining subsections renumbered.

Subsection (c) clarifies that the parent has been made aware of the "order of" placement preference.

Section 30966

It was suggested that regulations provide for encouraging natural parents to make arrangements other than adoption planning for their children to avoid later placement disruptions. The department does not believe this change is necessary for the following reasons: (1) The Indian Child Welfare Act ensures informing the parents of the right to rescind the relinquishment at any time until the adoption decree; (2) There is a general mandate upon caseworkers in all relinquishment adoptions to provide such counseling during the course of adoption planning; and (3) The department therefore feels that such planning with the parent is an individual casework/counseling issue that should not be dealt with

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Section 30921

It was asserted that subsection(b)(1) would allow separation of Indian children from the foster or pre-adoptive families they have known in order to place the children in Indian homes. The potential for trauma was stressed by the testifier. The regulations merely reflect the provisions of the Act in this regard. The traumatic effect of such separation is a situation for the court to consider in terms of whether good cause to the contrary exists for not following the order of placement preference. (The same assertion was made in reference to Section 30925(a) and (b), but again no change was made.)

Subsection (b)(2) was revised, based on testimony, to include provision for setting aside an adoption for duress as well as for fraud as specified in the Act. In addition, a three-year time limitation is added during which an adoption can be set aside.

Subsection (c) has been revised to clarify the two uses of the term "order." The first refers to a sequence and the second to a direction given by the court.

Subsection (d) has been amended to remove the qualifier that a court of competent jurisdiction must be in the area where the parent is residing. This may not always be the case, particularly where persons in the military are involved. (The same change was made to Section 30932(d)).

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2. How is anonymity assured in making inquiries regarding tribal ancestry?

The State Department of Social Services has a procedure established with the Bureau of Indian Affairs whereby anonymity for parents if requested in a voluntary placement by the parents can be maintained by the BIA in its procedures. Such anonymity cannot, of course, be maintained in nonvoluntary placement.

3. Why is a court proceeding necessary in Section 30912(h)(1) and (2) to determine a parent's right to a child when that parent has been previously deprived of legal custody?

Legal custody and parental rights are two different issues. Consent to adoption terminates all rights to a child, not just custodial rights. For parents who did not give up custody and who withdraw consent, there must be a court proceeding to determine what rights, if any, they may have with regard to the child.

4. When can a parent request modification of the placement order?

This would usually be done at the time the relinquishment is signed in court but may be done at any time up to the time the adoption decree is granted.

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Finally, it was suggested that a policy statement be added to Subchapter 4 requiring that all decisions made under the regulations be governed by the standard of the child's best interest as stated in the federal law. Sections 1912(b) and 1916 of the federal law refer to standards of the child's best interest. These sections pertain to court proceedings in which the court's decisions are to be based on serving the best interest of the child. State regulations do not direct courts in decision-making processes. It is believed that an overall policy statement regarding standards in the child's best interest is unnecessary.

In addition to testimony requesting actual regulation changes, the department received questions asking for clarification of various points. These questions and their answers follow:

1. When a child is a descendant of more than one tribe, who decides which tribe has precedence in the custody process?

In involuntary terminations of parental rights to a child who is a descendant of more than one Indian tribe, all pertinent tribes are notified. If there is a dispute among the tribes, the court in which the involuntary proceedings were initiated determines which tribe has the most significant contacts in accordance with federal guidelines.

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SB 90 DISCLAIMER: The attached regulations require no reimbursement pursuant to Section 2231 of the Revenue and Taxation Code because these regulations merely affirm for the state that which has been declared existing law by the Federal government.

COST ESTIMATE: It has been estimated that the cost impact in F.Y. 80/81 is \$88,500 (County) and \$30,697 (State).

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5. How is the return of the child by the adoptive parents handled under these regulations?

If the adopting parents return a child in a relinquishment adoption and the adoption has not yet been finalized in court, the natural parents need to be contacted for further planning unless the parent has previously waived his or her right to further contact. If the child is re-placed by the agency, the placement order as established by the Act shall continue to be followed unless the order <sup>further</sup> is/modified by the court or by tribal resolution. If an independent adoption petition is dismissed or withdrawn the natural parents of the child are contacted for further planning. If an adoption has been finalized and the adoptive parents relinquish the child or the adoption decree is set aside, the agency shall notify the natural parents if the natural parents requested such notification as provided for in Section 30912(i). Future planning for the child would then proceed with consideration for the parents' requests and the child's needs. Any future placements would also be made in accordance with the provisions of the Indian Child Welfare Act and state regulations. If a relinquishment is rescinded, the agency is responsible for return of the child to the parent. If a consent is withdrawn, the agency files a report with the court advising the court of the parent's request and recommending return of the child.

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(p. 522)

SOCIAL SERVICES—HEALTH SERVICES

TITLE 22

(Register 81, No. 1—1-3-81)

Article 6. Case Files, Records and Reports

Section  
30737. Case Records Confidential

Article 7. Planning for Child in Denials and Dismissals

Section  
30801. Responsibilities and Alternatives When Adoption is Not to be Completed  
30803. Commitment Procedures  
30805. Permanent Plan  
30807. Commitment Termination

SUBCHAPTER 4. ADOPTION OF INDIAN CHILDREN SUBJECT TO PROVISIONS OF THE FEDERAL INDIAN CHILD WELFARE ACT OF 1978

Article 1. Definitions

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30900. Definitions

Article 2. Certification of Indian Blood; Tribal Eligibility; Tribal Enrollment

Section  
30905. Certification Procedures of Agency or District Office

Article 3. Natural Parents and Children

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30910. Required Study—Natural Parents  
30912. Informing Parents of Act's Provisions  
30914. Information Transmitted to Adoptee

Article 4. Relinquishment

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30919. Relinquishment—General Requirements  
30921. Taking Relinquishment  
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Article 5. Consent—Independent Adoption

Section  
30930. Consent—General Requirements  
30932. Taking Consent  
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Article 6. Termination of Parental Rights

Section  
30940. Termination of Parental Rights—General Requirements  
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30944. Involuntary Termination of Parental Rights

Article 7. Work with Applicants for Indian Children

Section  
30950. Work with Applicants—General Requirements  
30952. Information Transmitted to Applicants

Article 8. Petitioners for the Adoption of Indian Child—Independent Adoptions

Section  
30957. Information Transmitted to Independent Petitioners

Article 9. Placement and Supervision

Section  
30962. Placement and Supervision—General Requirements  
30964. Selection of Adoptive Parents for an Indian Child  
30966. Placement Agreement Between the Agency and the Adoptive Parent(s)

**TITLE 22****SOCIAL SERVICES—HEALTH SERVICES**

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**(Register 81, No. 1—1-3-81)**

## Section

- 30673. Responsibility for Payment
- 30674. Private Agency—Cost Reimbursement
- Article 8. Adoption Resource Referral Center

## Section

- 30675. Purpose
- 30677. Registration
- 30679. Referrals
- 30681. Discontinuance Notifications
- 30683. Cooperation With Adoption Resource Exchange of North America

## Article 9. Grievance Procedures—Relinquishment Adoption Program

## Section

- 30684. Grievance Procedures

**SUBCHAPTER 3. INDEPENDENT ADOPTIONS**

## Article 1. The Study

## Section

- 30685. Time Allowed for Study
- 30687. The Adoptive Home
- 30689. Content of the Study
- 30691. The Child
- 30693. The Parents
- 30695. Adoptive Petitioners Absent From California
- 30697. The Narrative Record
- 30699. Responsibility of Agency to Tell Petitioners About Disbursement Report
- 30701. Responsibility of Agency to Inform Petitioners About Concealment Provisions
- 30703. Medical Reports and Examinations
- 30705. Authorization
- 30707. Verifications
- 30709. Verification of Removal of Child from Adoptive Home

## Article 2. Other Processes Related to Study

## Section

- 30711. Concurrent Petitions
- 30713. Extension of Time

## Article 3. Consent

## Section

- 30715. Taking Consent
- 30717. Content of Consent
- 30719. Corrections or Alterations on Consent
- 30721. Taking of Consent—Competency to Sign (See Section 30723)
- 30723. Consent not Possible by Some Parents with History of Mental Illness or Mental Deficiency
- 30724. Termination of Parental Rights
- 30724.1. Definitions
- 30724.2. Procedures Regarding Alleged Natural Father

## Article 4. The Court Report

## Section

- 30725. Filing
- 30727. Content
- 30729. Supplemental Reports
- 30731. Reporting to Court on Serious Questions

## Article 5. Court Proceedings and Completion of Adoption

## Section

- 30735. Certificate of Adoption



**30803. Commitment Procedures.**

(a) A plan shall be made and a report shall be sent to the court as soon as it is determined that commitment will be recommended. The matter shall be set for court hearing at the earliest available date.

(b) The licensed county adoption agency which assumes full responsibility for planning for the child shall recommend that the court deny the adoption and commit the child to the agency for supervision and adoption planning.

(1) Responsibility for the child shall be the same as for any child accepted for study and care who has not been legally freed for adoption.

(2) The commitment order, prepared by the county counsel, shall include:

(A) A provision placing custody of the child with the agency for planning.

(B) Authorization for the agency to obtain necessary medical care.

(c) The Department, in assuming responsibility for planning for the child, shall request the county welfare department of the county in which the petition is pending or another county welfare department to act as its agent in providing care and planning.

(1) The Department shall arrange for its agent to:

(A) Take physical custody of the child.

(B) Place the child in temporary care facilities.

(C) Supervise and plan for the child.

(D) Provide the Department with quarterly reports.

(2) The Department shall be responsible to the court for planning for the child committed to the Department. The Department shall approve both the temporary and permanent plan made by the licensed county adoption agency or county welfare department to which care and supervision has been delegated.

(3) The commitment order to the Department, prepared by the Office of the Attorney General, shall include authorization for the Department or the Department's agent to obtain necessary medical care.

(d) A county may accept care of a child prior to the commitment hearing. Cost of such care until the hearing rests with the county.

(e) The state shall reimburse each county, including licensed county adoption agencies, for the full cost of care of any child placed under the custody of the county welfare department pursuant to Section 226(c) of the Civil Code. Reimbursement shall be from the effective date of the court commitment until the date of placement for adoption, or until another permanent plan is made for the child.

**30805. Permanent Plan.**

(a) Jurisdiction of the licensed county adoption agency or the Department shall continue under the commitment order until a permanent plan is made. A permanent plan includes:

(1) Placement with relatives.

(2) Return to parents.

(3) Placement in long-time foster care.

(4) Placement for adoption.

(b) The agent shall schedule a case conference with the Department, when the permanent plan has been developed.

**30807. Commitment Termination.**

The licensed county adoption agency or the Department shall file a final court report outlining the permanent plan and recommending that the commitment be vacated. The order to vacate commitment shall be prepared by the county counsel or the Office of the Attorney General, as appropriate.

SUBCHAPTER 4. ADOPTION OF INDIAN CHILDREN SUBJECT TO  
PROVISIONS OF THE FEDERAL INDIAN CHILD WELFARE  
ACT OF 1978

Article 1. Definitions

30900. Definitions.

Within the meaning of Subchapter 4, the following definitions shall apply:

(a) "Act" means the Federal Indian Child Welfare Act of 1978 (25 USC, Section 1901 et seq.).

(b) "Agency" means a licensed public or private adoption agency.

(c) "District office" means a Department of Social Services office that provides independent adoption services in accordance with Sections 30685–30807, or relinquishment adoption services in accordance with Sections 30583–30684.

(d) "Indian" means any person who is a member of an Indian tribe, or who is an Alaskan Native and a member of a Regional Corporation as defined in Section 1606 of Title 43, U.S. Code.

(e) "Indian child(ren)" means any unmarried person who is under eighteen years of age and who is either a member of an Indian tribe, or is eligible for membership in an Indian tribe, and is the biological child of a member of an Indian tribe.

(f) "Indian child's extended family" means that defined by the law of custom of the Indian child's tribe; or in the absence of such a law or custom, a person who has reached the age of eighteen and is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(g) "Indian child's tribe" means the Indian tribe in which an Indian child is a member or is eligible for membership; or in the case of an Indian child who is a member of or is eligible for membership in more than one tribe, the tribe with which the Indian child has the more significant contacts.

(h) "Indian custodian" means any Indian person(s) who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(i) "Indian tribe" means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska native village as defined in Section 1602c of Title 43, U.S. Code.

(j) "Parent(s)" means any biological parent of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

(k) "Petitioners" means prospective adoptive parents once a petition for adoption has been filed.

**TITLE 22****SOCIAL SERVICES—HEALTH SERVICES****§ 30910****(Register 81, No. 1—1-3-81)****(p. 575)**

(1) "Tribal court" means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Sections 10553 and 16100, Welfare and Institutions Code; Section 1530, Health and Safety Code; and Section 1903, Title 25, U.S. Code; and Sections 1602c and 1606, Title 43, U.S. Code.

**HISTORY:**

1. New Subchapter 4 (Articles 1-9, Sections 30900-30966, not consecutive) filed 12-29-80; effective thirtieth day thereafter (Register 81, No. 1).

**Article 2. Certification of Indian Blood; Tribal Eligibility; Tribal Enrollment****30905. Certification Procedures of Agency or District Office.**

(a) In order to determine whether a child is of Indian blood, a licensed adoption agency or district office shall obtain sufficient information from the parent(s) regarding the child's Indian ancestry.

(b) The agency or district office shall immediately submit Form AD 4311, Information on American Indian Child (Adoption Program), and a copy of the child's original birth certificate to the Department for forwarding to BIA for confirmation of tribal enrollment/eligibility and certification of degree of Indian blood.

(c) The BIA will forward all documents pertaining to tribal enrollment/eligibility and certification of degree of Indian blood to the Department for the central file and a copy of the documents to the agency or district office to be maintained in the child's adoption file. The Department will confirm receipt of the response from BIA with the agency or district office.

NOTE: Authority cited: Section 224a, Civil Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Sections 10553 and 16100, Welfare and Institutions Code; Section 1530 Health and Safety Code; and Section 224a, Civil Code.

**Article 3. Natural Parents and Children****30910. Required Study—Natural Parents.**

(a) As part of the adoption study, procedures under Sections 30591-30605 shall be followed for the child relinquished to an agency, and Section 30693 for a child placed in an independent adoption.

(b) In addition, the parent(s) of an Indian child shall be requested to provide the following to the adoptions caseworker if known by the parent:

- (1) Tribal affiliation(s) of parent(s), Indian child and grandparents.
- (2) Names, birth dates and birth places of the child's Indian grandparents and great grandparents.
- (3) Tribal or BIA roll numbers or any other indications of tribal affiliation for the parents, Indian child and grandparents.
- (4) Names and addresses of extended family members.
- (5) Tribal customs regarding child placement practices.
- (6) Addresses where tribal governing organizations may be located.

NOTE: Authority cited: Section 224a, Civil Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.

**30912. Informing Parents of Act's Provisions.**

The agency shall inform the parent(s) of an Indian child subject to the provisions of the Indian Child Welfare Act:

(a) That the provisions of the Act may apply if at least one parent is a member of an Indian tribe as defined in Section 30900.

(b) That in the adoption program there is an order of placement preference as follows:

- (1) A member of the child's extended family.
- (2) Other members of the child's tribe.
- (3) Other Indian families.

(c) That in a relinquishment adoption the agency shall follow the order of placement preference in the absence of good cause to the contrary, as established to the satisfaction of the Superior Court, or a different order established by the child's tribe.

(d) That if the parent(s) requests modification of the placement order in a relinquishment adoption, the request shall be brought to the attention of the court for review and order on whether the placement order shall be modified.

(e) That in an independent adoption the court shall be advised that the parent has been made aware of the order of placement preference and has made the decision to consent to the adoption by the petitioners.

(f) That it will be necessary to take the relinquishment or consent before a judge of the Superior Court who will certify in writing that the terms and consequences of signing the relinquishment or consent were fully explained in a language understood by the parent, and that such terms and consequences were understood by the parent.

(g) That in the event the parent who gave physical custody of the child to the agency or petitioners and has not otherwise been deprived of legal custody requests to rescind the relinquishment or withdraw the consent, or refuses to give consent, the following procedures will be followed:

(1) In a relinquishment adoption, if the request precedes placement the agency shall rescind the relinquishment and return the child to the parent. If the parent's request follows an adoptive placement, the agency shall immediately notify the adoptive parents and return the child to the parent. The child shall be returned within an agreed upon time period, which would ordinarily not exceed three working days. In no case shall the return of the child require more than seven calendar days following the parent's request.

(2) In an independent adoption, if the consent has not been signed and the parent wishes return of the child, the parent rather than the agency will request the petitioners to return the child. If the petitioners refuse, the agency or district office shall immediately file a report with the court and recommend the child's return. If the consent has been signed, the agency or district office shall immediately file a report with the court advising the court of the parent's request and recommending that the child be returned to the parent.

(3) Any other parent whose consent has been taken or whose relinquishment has been filed shall immediately be notified of the request to rescind the relinquishment or withdraw the consent and notified of any court proceedings resulting from the request.

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(h) That in the event the parent who did not give physical custody of the child to the agency or petitioners, or the parent who has been deprived of legal custody, requests rescission of the relinquishment or withdrawal of the consent, the following procedures shall be followed:

(1) In an independent adoption, the petitioners shall be advised that court proceedings will be necessary to determine whether that parent has a right to physical custody of the child or whether the adoption plan can proceed.

(2) In an agency adoption, the agency shall initiate court proceedings which will determine whether that parent has a right to physical custody of the child or whether the adoption plan can proceed.

(3) Any other parent whose consent has been taken or whose relinquishment has been filed shall immediately be notified of the request to rescind the relinquishment or withdraw the consent and notified of any court proceedings resulting from the request.

(i) That if the agency or petitioners initiate legal proceedings to involuntarily terminate the parent's rights to the Indian child, the tribe shall be notified and may intervene in the proceedings.

(j) That the agency or district office shall take the necessary steps to enroll an Indian child in his tribe or to register him for any BIA benefits for which he may be eligible, and that it is necessary for the agency to obtain sufficient background information to obtain tribal enrollment and BIA registration.

(k) That the parent may ask that (s) he be notified if the adoption petition is dismissed or set aside. The parent's desire for notice shall be documented in the case record. In the event that the parent requests notification, the agency investigating the dismissal or the set aside shall provide written notice to the parent. A copy of the notice to the parent shall be retained in the case record.

(l) That upon petition of either parent, the Indian custodian or the Indian child's tribe, all court proceedings with regard to the child shall be transferred to the jurisdiction of the tribal court, providing there is no good cause to the contrary, and both parents and the tribal court agree.

(m) That if the parent wishes anonymity after the child is 18, (s) he must file an affidavit with the court requesting it and give a copy to the agency for filing in the adoption record.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; Section 1530, Health and Safety Code. Reference: Welfare and Institutions Code; Section 1530, Health and Safety Code; Section 224a, Civil Code; and Sections 1911, 1912, 1913, 1915, 1916, 1917 and 1951, Title 25, U.S. Code.

**30914. Information Transmitted to Adoptee.**

The Department shall, upon request by the adoptee who has reached 18:

(a) Inform the adoptee as to the tribe in which he is enrolled, or eligible for enrollment, and his degree of Indian blood.

(b) Inform the adoptee that the Department will forward to BIA any information necessary to obtain benefits to which he is entitled, including tribal enrollment.

(c) Inform the adoptee that if he desires additional identifying information, he may petition the Superior Court pursuant to Civil Code Section 227 and Health and Safety Code Section 10439.

NOTE: Authority cited: Section 224a, Civil Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 10553, Welfare and Institutions Code; and Section 1917, Title 25, U.S. Code.

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Article 4. Relinquishment

30919. Relinquishment—General Requirements.

Procedures under Sections 30613–30625 shall apply. In addition, Sections 30921–30925 shall apply.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 224m, Civil Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.

30921. Taking Relinquishment.

(a) A relinquishment shall be taken from the parent(s) of an Indian child:  
(1) After the child's eligibility under the Act has been established; and  
(2) No sooner than ten days after the birth of the child.  
(b) The authorized agency official and the child's parent(s) shall appear together before a Superior Court judge to sign a relinquishment for the adoption of an Indian child. In the presence of the judge and before the relinquishment can be signed, the agency official shall explain the terms and consequences of the relinquishment in detail to the child's parent in a language understood by the parent. In order for the relinquishment to be valid, the judge shall certify in writing that the relinquishment was fully explained and understood, including that:

(1) The relinquishment may be rescinded at any time prior to the issuance of the decree of adoption. If the parent requesting to rescind the relinquishment gave physical custody of the child to the agency and has not otherwise been deprived of legal custody, the child shall be returned to the parent. If the parent did not give physical custody of the child to the agency or has been deprived of legal custody of the child, the agency shall initiate court proceedings to determine whether that parent has a right to physical custody of the child or whether the adoption plan can proceed.

(2) After the entry of the adoption decree, it may only be set aside at the request of a biological parent if there is a finding of fraud or duress and only if the adoption has been in effect for less than three years.

(3) The parent may request return of the child if the decree is vacated.  
(c) If the parent has requested modification of the order of placement preference, the request shall be brought to the attention of the court for review. A court order is required to modify the order of placement preference.

(d) A relinquishment signed out of state shall be taken before and certified by a judge of a court of competent jurisdiction.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 224m, Civil Code; Section 1913, Title 25, U.S. Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.

30923. Filing Relinquishment.

A certified copy of the relinquishment and the judge's certification shall be filed with the Department. The relinquishment will not be effective until a certified copy is filed.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 224m, Civil Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.

(1) The consent may be withdrawn prior to the issuance of the decree of adoption. If the consent is withdrawn by a parent who gave physical custody of the child to the petitioners and was not otherwise deprived of legal custody, the agency shall immediately file a report with the court recommending return of the child. If the consent is withdrawn by a parent who did not give physical custody of the child to the petitioners or who has been deprived of legal custody of the child, the agency will not recommend return of the child. The agency shall notify the petitioners of the parent's request and advise the petitioners that court proceedings will be necessary to determine whether the adoption plan can proceed or whether that parent has a right to physical custody of the child.

(2) After the entry of a decree of adoption, such decree may only be set aside by a finding of fraud or duress and only if the adoption has been effective for less than three years.

(3) The parent may request return of the child if the decree is vacated.

(c) If the placement by the parent does not meet the order of placement preference described in Section 30912(b), the court shall be advised that the parent has been made aware of the order of placement preference and has made the decision to consent to adoption by the petitioners.

(d) A consent taken out of state shall be signed before and certified by a judge of a court of competent jurisdiction.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 226, Civil Code; Section 1913, Title 25, U.S. Code; Sections 10553 and 16100, Welfare and Institutions Code.

#### 30934. Withdrawing Consent.

(a) If the parent withdrawing consent prior to issuance of the decree gave physical custody of the child to the petitioners and was not otherwise deprived of legal custody of the child, the agency shall immediately file a report notifying the court that the child is subject to the provisions of the Act. In the report the agency shall recommend that the child be returned to the parent and that the petition for adoption be dismissed. The agency will also request a court hearing.

(b) If the parent withdrawing consent did not give physical custody of the child to the petitioners and has not otherwise been deprived of legal custody of the child, the report shall not recommend that the child be returned or that the petition for adoption be dismissed. The agency shall advise the petitioners of the request to withdraw consent so that they may initiate proceedings to determine whether the adoption plan can proceed or whether that parent has a right to the physical custody of the child.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 226(a), Civil Code; Section 1913, Title 25, U.S. Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.

### Article 6. Termination of Parental Rights

#### 30940. Termination of Parental Rights—General Requirements.

Procedures under Sections 30626–30626.2 and 30724–30724.2 shall apply. In addition, Sections 30942–30944 shall apply.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Sections 10553 and 16100, Welfare and Institutions Code; Section 1530, Health and Safety Code; Sections 224m and 226, Civil Code.

**30925. Rescinding Relinquishment.**

At the request of the parent(s), the agency shall agree to the rescission of a relinquishment prior to the issuance of a final adoption decree of the court.

(a) When a request to rescind the relinquishment has been made to the agency or district office, and the agency has determined the child is in jeopardy of serious physical or emotional damage, an immediate referral by the agency or the district office of the parent(s) and child shall be made to the appropriate protective services agency.

(b) When the relinquishment is rescinded by a parent who gave physical custody of the child to the agency and has not otherwise been deprived of legal custody of the child, and no adoptive placement has been made the agency shall return the child to the parent. Any other parent who voluntarily relinquished the child shall be notified of the rescission. If the parent's request follows an adoptive placement, the agency shall immediately notify the adoptive parents of the request to rescind the relinquishment and return the child to the parent.

(c) The child shall be returned within an agreed upon time period, which would ordinarily not exceed 3 working days. In no case shall the return of the child require more than 7 calendar days following the parent's request.

(d) When the relinquishment is rescinded by a parent who did not give physical custody of the child to the agency or a parent who has been deprived of legal custody of the child, the agency shall initiate court proceedings to determine whether that parent has the right to physical custody of the child or whether the adoption plan can proceed.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 1913, Title 25, U.S. Code; Section 224m, Civil Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.

**Article 5. Consent—Independent Adoption**

**30930. Consent—General Requirements.**

Procedures under Sections 30715–30723 shall apply. In addition, Sections 30932–30934 shall apply.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 226, Civil Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.

**30932. Taking Consent.**

(a) A consent shall be taken from the parent(s) of an Indian child:  
(1) After proof of the child's eligibility under the Act; and  
(2) No sooner than ten days after the birth of the child.  
(b) The authorized agency official and the Indian child's parent(s) shall appear together before a judge of the Superior Court to sign a consent for the adoption of an Indian child. In the presence of the judge and before the consent can be signed, the agency official shall explain the terms and consequences of the consent in detail to the Indian child's parent in a language understood by the parent. In order for the consent to be valid, the judge shall certify in writing that the consent was fully explained and understood, including that:



**30942. Voluntary Termination of Parental Rights.**

(a) The parents may terminate the legal rights to their child by signing a relinquishment or consent before a Superior Court judge as required in Sections 30921 and 30932.

(b) In the case of any alleged natural father of a child, he shall be given notice of the adoption plan for the child and that:

(1) He may relinquish or consent to the adoption of the child by appearing before a Superior Court judge in accordance with Sections 30921 or 30932, or

(2) He may deny paternity in writing or waive his rights to further notice of adoption planning in accordance with Section 30626.2.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Sections 224, 224m, 226 and 7004, Civil Code; Section 1913, Title 25, U.S. Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.

**30944. Involuntary Termination of Parental Rights.**

(a) In the absence of a signed relinquishment or consent, parental rights may be terminated only by legal action pursuant to Civil Code Sections 224, 232 or 7017 and Public Law 95-608.

(b) The petition to terminate parental rights filed by the adoption agency or district office shall report to the court:

(1) Efforts which were made to provide services and rehabilitative programs designed to prevent the breakup of the family, and

(2) That such efforts were unsuccessful. Testimony of qualified expert witnesses shall be required at the hearing to show that the continued custody of the child by the parent or Indian custodian is likely to result in serious physical or emotional damage to the child. The court findings shall be included in the final report to the adoption court.

(c) When the identity and location of the parents are known and the tribe is identified, the agency, department or independent petitioner seeking termination of parental rights shall notify the child's tribe and the parent(s) or Indian custodian of the pending proceedings and of their right to intervene in the proceedings. Such notice shall be given upon filing the petition and shall be by registered mail, return receipt requested. The agency, district office or independent adoption petitioner shall provide the court with proof of notice.

(d) When the identity or location of the parents or Indian custodian is unknown, or the child's tribal affiliation cannot be determined, the agency, department or independent petitioner seeking termination of parental rights shall give notice of the proceedings to the Secretary of the Interior (Sacramento Area District Office, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825). Such notice shall be sent by registered mail, return receipt requested, and shall include:

(1) The names, dates, and birth place of the Indian child, his parents or Indian custodian,

(2) The mother's maiden name, and

(3) Tribal affiliation (when known).

A copy of the petition shall also be forwarded to the BIA. Proceedings for termination of parental rights shall not be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary of the Interior. The parent, or Indian custodian, or tribe will, upon request, be granted up to 20 additional days to prepare for such proceeding.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Sections 224, 232 and 7017, Civil Code; Section 1912, Title 25, U.S. Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.

#### Article 7. Work with Applicants for Indian Children

##### 30950. Work with Applicants—General Requirements.

Procedures under Sections 30627–30637 shall apply. In addition, Section 30952 shall apply.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Sections 224m and 226, Civil Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.

##### 30952. Information Transmitted to Applicants.

The applicants for an Indian child shall be advised that:

(a) The order of placement preference, in the absence of good cause to the contrary, or a different order established by the child's tribe, shall be as follows:

- (1) A member of the child's extended family.
- (2) Other members of the child's tribe.
- (3) Other Indian families.

(b) The parents have the right to have the child returned to them at any time prior to the issuance of an adoption decree by the court.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Sections 10553 and 16100, Welfare and Institutions Code; Section 1530, Health and Safety Code; Section 226, Civil Code; and Sections 1913 and 1915, Title 25, U.S. Code.

#### Article 8. Petitioners for the Adoption of Indian Child—Independent Adoptions

##### 30957. Information Transmitted to Independent Petitioners.

Independent petitioners shall be advised that:

(a) The provisions of the Act apply to the non-Indian parent of an Indian child, as well as to the Indian parent.

(b) The parents may withdraw consent prior to the issuance of a final adoption decree by the court and have the right to have the child returned to them.

(c) If it is necessary to involuntarily terminate parental rights to the child, the procedures outlined in Section 30944 shall be followed.

(d) The petitioners shall be responsible for providing the agency or Department with a copy of the petition and order terminating parental rights.

(e) The agency or district office shall incorporate in its final report to the court the findings contained in the order terminating parental rights.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 226, Civil Code; Sections 1912 and 1913, Title 25, U.S. Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.

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Article 9. Placement and Supervision

**30962. Placement and Supervision—General Requirements.**

Procedures under Sections 30639–30649 shall apply. In addition, Sections 30964–30966 shall apply.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Sections 224 and 224m, Civil Code; Section 1530, Health and Safety Code; and Sections 10553 and 16100, Welfare and Institutions Code.

**30964. Selection of Adoptive Parents for an Indian Child.**

(a) In the absence of good cause to the contrary, or a different order established by the child's tribe, the agency shall give preference in the following order to placement of the child:

- (1) A member of the child's extended family.
- (2) Other members of the child's tribe.
- (3) Other Indian families.

(b) The standards to be applied in meeting the order of placement preference requirements shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or in which the parent or extended family members maintain social and cultural ties.

The basis used to comply with the order of placement preference and the reason for any failure to comply shall be included in each record. A copy of the court order and documentation establishing good cause to the contrary shall be attached to the Notice of Placement Form AD 558, and forwarded to the Department.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 224n, Civil Code; Section 1915(a), Title 25, U.S. Code; and Sections 10553 and 16100, Welfare and Institutions Code.

**30966. Placement Agreement Between the Agency and the Adoptive Parent(s).**

The written placement agreement shall include confirmation that the adoptive parents were advised that the Indian child's parent(s) may rescind their relinquishment and have the child returned to them at any time prior to the issuance of a final adoption decree by the court.

NOTE: Authority cited: Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code. Reference: Section 224, Civil Code; Section 1913, Title 25, U.S. Code; Sections 10553 and 16100, Welfare and Institutions Code; and Section 1530, Health and Safety Code.